

THE FIRST PENNSYLVANIA BANKING AND TRUST
COMPANY, as Agent

and

PULLMAN INCORPORATED
(Pullman-Standard Division)

between

Dated as of May 1, 1970
AGREEMENT AND ASSIGNMENT

NORFOLK AND WESTERN RAILWAY COMPANY

and

PULLMAN INCORPORATED
(Pullman-Standard Division)

between

Dated as of May 1, 1970
CONDITIONAL SALE AGREEMENT

INTERSTATE COMMERCE COMMISSION

MAY 5 - 1970 - 2 12 PM

RECORDATION NO. 5704
Filed & Recorded

CONDITIONAL SALE AGREEMENT dated as of May 1, 1970, between the corporation named in Item 1 of Schedule A hereto (hereinafter called the Vendor or Manufacturer, as more particularly set forth in Article 26 hereof), and NORFOLK AND WESTERN RAILWAY COMPANY, a Virginia corporation (hereinafter called the Railroad).

WHEREAS, the Manufacturer has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad equipment described in Schedule B hereto (hereinafter, together with additional and/or substitution equipment and replacement equipment acquired pursuant to the third paragraph of Article 2 and Article 7 hereof, respectively, called the Equipment);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Manufacturer will construct the Equipment at its plant set forth in Schedule B hereto and will sell and deliver the Equipment to the Railroad and the Railroad will purchase from the Manufacturer and accept delivery of and pay for (as hereinafter provided) the Equipment, each unit of which will be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing by the Manufacturer and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of the Equipment will conform to all Interstate Commerce Commission and Department of Transportation requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted by the Manufacturer as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. *Delivery.* The Manufacturer will deliver the Equipment to the Railroad, f.o.b. the Railroad's tracks at the place or places and in accordance with the delivery schedule set forth in Schedule B hereto.

The Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, accidents due to natural causes, acts of the Railroad, acts of government (such as embargoes, priorities and allocations, war or war conditions), riot or civil commotion, sabotage, strikes, differences with workmen, fire, flood, explosion, accidents or other events resulting in damage to plant, equipment or facilities and delays in receiving necessary materials.

The Railroad may (a) purchase hereunder from the Manufacturer, or arrange for the acquisition by the Vendor from a person or persons other than the Railroad of, other units of railroad equipment of similar character to the Equipment, first put into service no earlier than May 1, 1970 (hereinafter called Additional Equipment), which Additional Equipment may be acquired in lieu of or in addition to units of the Equipment, and (b) elect to exclude from this Agreement any unit or units of the Equipment described in Schedule B hereto. In the case of either of (a) or (b) above, the Vendor and the Railroad shall execute an agreement amendatory hereof or supplemental hereto providing for such inclusion hereunder of Additional Equipment or for such exclusion of any unit or units of the Equipment from this Agreement. If the Railroad should so elect to exclude any units of the Equipment for any reason other than the Manufacturer's failure to construct, sell and deliver the same in accordance with its obligations hereunder, the Railroad shall nevertheless be obligated to accept such units and pay the full Purchase Price (as hereinafter defined) therefor if and when such units shall be completed and delivered to it by the Manufacturer, such payment to be made in cash by the Railroad or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement,

equipment trust or such other appropriate method of financing as the Railroad shall determine which will assure the Manufacturer of prompt payment in full for such units of the Equipment.

The Equipment shall be subject to inspection and approval prior to delivery by an inspector or other authorized representative of the Railroad, and the Manufacturer shall grant to such inspector or authorized representative reasonable access to its plant. The Manufacturer agrees to inspect materials entering into the construction of the Equipment in accordance with the standard quality control practices of the Manufacturer.

Upon the completion of construction of one or more units of the Equipment, such unit or units shall be presented to an authorized representative of the Railroad for inspection at the place designated in Schedule B hereto for delivery of such unit or units. If each such unit conforms to the Specifications, such authorized representative shall execute and deliver to the Manufacturer, in duplicate, a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that the unit or units of the Equipment covered thereby have been inspected, have been found to conform to the Specifications, are marked in accordance with Article 6 hereof and are accepted on behalf of the Railroad.

Upon delivery by the Manufacturer to the Railroad and acceptance by the Railroad of a unit of the Equipment hereunder, the Railroad shall assume with respect thereto the responsibility and risk of loss.

ARTICLE 3. *Purchase Price and Payment.* The estimated unit price and the estimated total price of the Equipment are set forth in Schedule B hereto. Such estimated prices, which include off-line freight charges, if any, from the Manufacturer's plant to the point of delivery, are subject to such increase or decrease as may be agreed to by the Manufacturer and the

Railroad. The term "Purchase Price" as used herein shall mean the estimated prices as so increased or decreased.

Units of the Equipment shall be settled for in such number of groups of such units delivered to and accepted by the Railroad as shall be determined by mutual agreement of the Railroad and Manufacturer (each such group being hereinafter called a Group).

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment as stated in the invoice or invoices therefor (hereinafter called the Invoiced Price), as follows:

(a) on any Closing Date (as hereinafter defined) with respect to a Group the amount, if any (hereinafter called the Adjustment Payment), by which the Invoiced Price of all the units of the Equipment for which settlement has theretofore been and is then being made (hereinafter called the Aggregate Invoiced Price), exceeds the sum of the Deferred Purchase Price set forth in Item 2 of Schedule A hereto and any amount previously paid or payable with respect to the Aggregate Invoiced Price pursuant to this subparagraph (a);

(b) if applicable, upon receipt of a final statement of the aggregate Purchase Price (hereinafter called the Final Statement) setting forth any revision of the Purchase Price of the Equipment (the Purchase Price as so revised being hereinafter called the Final Purchase Price), the amount, if any, by which the Final Purchase Price of all units of the Equipment, as stated in such Final Statement therefor, shall exceed the sum of the Deferred Purchase Price and the Adjustment Payment, if any; and

(c) in 15 consecutive annual instalments (as nearly equal as practicable) payable on May 1, 1971, and on each May 1 thereafter to and including May 1, 1985, an amount equal to the Aggregate Invoiced Price (or Final Purchase Price if an amount greater than the Aggregate Invoiced Price) of the Equipment less the amounts paid or payable with respect thereto pursuant to subparagraphs (a) and (b) of this paragraph.

If this Agreement is assigned by the Manufacturer, the obligations of the Railroad under subparagraphs (a) and (b) of this paragraph shall be unsecured obligations and the Manufacturer shall not have any lien on, or claim against, the Equipment or any part thereof with respect to such obligations, provided the assignee makes payment in accordance with the provisions of the instrument of assignment.

The portion of the Purchase Price of the Equipment payable under subparagraph (c) of the preceding paragraph of this Article 3 shall bear interest from the respective Closing Dates at the rate of $9\frac{1}{4}\%$ per annum on the portion thereof payable on or prior to May 1, 1972, and at the rate of $9\frac{1}{2}\%$ per annum on the portion thereof payable after May 1, 1972. Such interest shall be payable, to the extent accrued, on May 1 and November 1 in each year, commencing November 1, 1970.

The Final Statement, if any, shall be delivered by the Manufacturer to the Railroad as soon as practicable after the last Closing Date.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date not more than 10 business days following receipt by the Railroad from the Manufacturer of a bill of sale, invoice, Certificate or Certificates of Acceptance and opinion of counsel for the Manufacturer with respect to such Group, as shall be fixed by the Railroad by notice telephoned, telegraphed or mailed to the Vendor at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of $11\frac{1}{2}\%$ per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof.

All payments provided for in this Article 3 shall be made in Federal funds.

ARTICLE 4. *Taxes.* All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state or federal taxes—other than income, gross receipts (except gross receipts taxes in the nature of sales taxes), excess profits and similar taxes—or licenses hereafter levied or imposed upon or measured by this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and licenses the Railroad assumes and agrees to pay on demand in addition to the indebtedness in respect of the Purchase Price of the Equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment, upon the use or operation thereof, upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Vendor or result in a lien upon any unit of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, licenses, charges, fines or penalties and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. If any such taxes, assessments, licenses, charges, fines or penalties

shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor on presentation of invoice therefor; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid unless the Vendor shall have been legally liable with respect thereto or the Railroad shall have approved the payment thereof.

ARTICLE 5. *Title to the Equipment.* The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all of the payments hereunder and shall have kept and performed all its agreements contained herein, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

When and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, and all of the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Railroad, will execute a bill or bills of sale of the Equipment transferring the Vendor's title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address specified in Article 22 hereof. The Vendor will thereupon execute in the

same manner and deliver at the same place, for filing, recording or deposit in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment and will pay to the Railroad any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or to file such certificate within a reasonable time after written demand of the Railroad.

ARTICLE 6. *Marking of Equipment.* The Railroad will cause each unit of the Equipment to be kept numbered on both sides thereof with an identifying number as set out in Schedule B hereto and will keep and maintain, or cause to be kept and maintained, plainly, distinctly, permanently and conspicuously marked in stencil on both sides of such unit, in letters not less than one inch in height, a legend designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Vendor to the Equipment and its rights under this Agreement. The Railroad will not place any such unit of the Equipment in operation or exercise any control or dominion over any part thereof until such identifying number and legend shall have been so marked on both sides thereof and will replace or cause to be replaced promptly such identifying number and legend as may be removed, defaced or destroyed. The Railroad will not change or permit the change of the numbers of any such units unless it notifies the Vendor and furnishes the Vendor with evidence that the Railroad has filed, recorded and deposited in all public offices where this Agreement shall have been filed,

recorded and deposited a statement of new numbers to be substituted for the old numbers. In the event that any unit or units of replacement equipment acquired in accordance with Article 7 hereof shall have a different number from that of the unit or units replaced, the document or documents to be filed, recorded and deposited pursuant to said Article 7 shall show such new numbers.

Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered "Norfolk and Western," "N&W," or in some other appropriate manner for convenience of identification of the interests of the Railroad therein or of identification of the interests therein of a subsidiary or affiliated railroad company controlled by the Railroad (hereinafter called an Affiliate) to which the Railroad shall grant the right to possession and use of the Equipment pursuant to the provisions of Article 11 hereof.

ARTICLE 7. *Replacement of Equipment.* In the event that any unit of the Equipment shall be or become worn out, lost, destroyed, irreparably damaged, condemned, seized by a government or otherwise rendered permanently unfit or unavailable for use from any cause whatsoever (such occurrences being hereinafter called Casualty Occurrences) prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, the Railroad shall promptly and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as hereinafter defined) of units having suffered a Casualty Occurrence under this Agreement (exclusive of units having suffered a Casualty Occurrence with respect to which payment shall have been made to the Vendor pursuant to this Article 7) shall exceed \$100,000, the Railroad, within 30 days of such event, shall promptly pay to the Vendor an amount equal to the

liability may be charged against the Railroad hereunder and the Railroad will give notice to the Manufacturer of any claim known to the Railroad from which liability may be charged against the Manufacturer hereunder.

ARTICLE 15. *Assignments.* The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor; provided, however, an assignment or transfer to a railroad company (including a successor corporation by consolidation or merger) which shall acquire all or substantially all the property of the Railroad and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each and all of the obligations and covenants of the Railroad hereunder shall not constitute a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time to any person or persons. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to construct and deliver the Equipment in accordance with Articles 1 and 2 hereof or to respond to its warranties and indemnities contained in Articles 13 and 14 hereof, or relieve the Railroad of any of its obligations to the Manufacturer hereunder, including without limitation its obligations to the Manufacturer under Articles 2, 4, 7, 13 and 14 hereof and the last paragraph of this Article 15 and subparagraphs (a) and (b) of the third paragraph of Article 3 hereof or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and

post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all of the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of notification of any such assignment, all payments thereafter to be made by the Railroad hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

The Railroad recognizes that it is the custom of railroad equipment manufacturers or sellers to assign conditional sale agreements and understands that the assignment of this Agreement, except for certain specified rights of the Manufacturer hereunder, is to become effective concurrently herewith. The Railroad expressly represents, for the purpose of assurance to any person or persons considering the acquisition of this Agreement or of all or any of the rights of the Manufacturer hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Manufacturer as hereinbefore provided the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against the Manufacturer only.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Railroad will, whenever requested by such assignee, change the markings to be maintained on both sides of each unit of the Equipment so as to indicate the title of such assignee to the Equipment, such markings to bear such words or legend as shall reasonably be specified by such assignee. The cost of such markings with respect to the first assignee of this Agreement (or to a successor agent in case the first assignee is an agent) shall be borne by the Railroad. The cost of such markings in connection with any subsequent assignment (other than to a successor agent if the first assignee is an agent) will be borne by the subsequent assignee.

In the event of any such assignment prior to the completion of delivery of the Equipment, the Railroad, in connection with each settlement for a Group of the Equipment subsequent to such transfer or assignment, will deliver to the assignee, at the time it gives notice fixing the Closing Date with respect to such Group as provided in Article 3 hereof, all documents required by the terms of such assignment to be delivered to the assignee in connection with such settlement, in such number of counterparts as may reasonably be requested, except for any opinion of counsel for the assignee.

If this Agreement shall have been assigned by the Manufacturer and the assignee shall not make payment to the Manufacturer on the Closing Date with respect to a Group of the Equipment of an amount equal to that portion of the Purchase Price of such Group payable pursuant to subparagraph (c) of the third paragraph of Article 3 hereof, the Manufacturer will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by the assignee, the Railroad will not later than 90 days after such Closing Date pay or cause to be paid to the Manufacturer such amount, together with interest thereon from such Closing Date to the

date of such payment to the Manufacturer at the highest prime rate of interest of leading New York City banks in effect on such Closing Date.

ARTICLE 16. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any sum payable by it when payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad, and all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings or otherwise given the same status as obligations incurred by such a trustee or trustees within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the indebtedness payable hereunder), and all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees

ARTICLE 8. *Maintenance and Repair.* The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

ARTICLE 9. *Compliance with Laws and Rules.* During the term of this Agreement the Railroad will comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the Interchange Rules of the Association of American Railroads and with all lawful rules of the Interstate Commerce Commission, the Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment. In the event that such laws or rules require the alteration of the Equipment, the Railroad will comply therewith, at its expense, and will maintain the Equipment in proper condition for operation under such laws and rules; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

ARTICLE 10. *Reports and Inspections.* On or before April 30 in each year, commencing with the year 1971, the Railroad will furnish to the Vendor an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of all units of the Equipment then covered hereby, (b) showing the amount, description and numbers of any units of the Equipment that have suffered a Casualty Occurrence, whether by accident or otherwise, during the preceding 12 months (or since the date of delivery hereunder of the Equipment in the case of the first such statement) and (c) stating that, in the case of any units of the Equipment repaired or repainted during the period covered by such statement, the markings required by Article 6 hereof have been preserved or replaced. The Vendor shall have the right, by its agents,

to inspect the Equipment and the Railroad's records with respect thereto once in every year.

ARTICLE 11. *Possession and Use.* The Railroad, so long as it shall not be in default hereunder, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it or by any Affiliate or over which it or any Affiliate has trackage rights and upon connecting and other railroads in the usual interchange of traffic and upon connecting and other railroads over which through service may from time to time be afforded but only upon and subject to all the terms and conditions of this Agreement, and upon the further condition that if such use is to be upon lines of railroad in any jurisdiction outside the United States of America, the Railroad shall prior to such use, to the satisfaction of the Vendor, arrange for the filing, recording or deposit (or any similar action) of such instruments required or advisable to protect the security interest of the Vendor in such Equipment in such jurisdiction and furnish to the Vendor an opinion of counsel practicing in such jurisdiction that this Agreement and any instrument of assignment pursuant to which rights hereunder may be assigned are valid instruments enforceable against the parties hereto and thereto in such jurisdiction in accordance with their terms and that any filing, recording or deposit (or any similar action) of such instruments required or advisable to protect the security interest of the Vendor in such Equipment in such jurisdiction has been effected, specifying any such filing, recording or deposit (or similar action) so effected. The Railroad, without the prior written consent of the Vendor, may, under an appropriate agreement, grant the right to possession of the Equipment and the use thereof to any Affiliate. The Railroad, with the prior written consent of the Vendor, may, under an appropriate agreement, grant the right to possession of the Equipment and the use thereof to any other railroad company. The rights of any such railroad company under said agreements shall be expressly subordinated to the rights of the Vendor under this Agreement.

ARTICLE 12. *Prohibition Against Liens.* The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through, under or against the Railroad or its successors or assigns which, if unpaid, might become a lien or a charge upon any unit or units of the Equipment equal or superior to the title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent (such liens being herein called permitted liens).

ARTICLE 13. *Indemnities and Warranties.* The Railroad shall indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, or out of the use and operation thereof during the period when title thereto remains in the Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Railroad shall bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any or all units of the Equipment.

The Manufacturer warrants that the Equipment will be built in accordance with the requirements, specifications

and standards set forth or referred to in Article 1 hereof and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Railroad and not manufactured by the Manufacturer) or workmanship or design (except as to designs specified by the Railroad and not developed or purported to be developed by the Manufacturer) under normal use and service. The Manufacturer's obligation under this paragraph shall be limited to making good at its plant any part or parts of the Equipment which shall, within one year after the delivery of such Equipment to the Railroad, be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective. The Manufacturer agrees with the Railroad that the acceptance of a unit or units of the Equipment by the Railroad under Article 2 hereof shall not be deemed a waiver by the Railroad of any of its rights under this paragraph.

The Manufacturer further warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to the Manufacturer.

The Manufacturer makes no warranties of merchantability or fitness for a particular purpose. The only warranties made by the Manufacturer are those set out above.

ARTICLE 14. *Patent Indemnities.* Except in case of designs specified by the Railroad and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Railroad and not manufactured by the Manufacturer, the Manufacturer shall indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad because of the use in or about the construction or operation of the Equipment, or any unit thereof,

of any design, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise shall indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design specified by the Railroad and not developed or purported to be developed by the Manufacturer, or article or material specified by the Railroad and not manufactured by the Manufacturer, which infringes or is claimed to infringe on any patent or other right. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever. The Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Railroad every claim, right and cause of action which the Manufacturer has or hereafter shall have against the originator of any design specified by the Railroad and not developed or purported to be developed by the Manufacturer or against the seller or sellers of any designs or articles or materials so specified by the Railroad and purchased or otherwise acquired by the Manufacturer for use in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on any patent or other right to the extent only that such claim, right or cause of action relates to the Equipment which is subject to this Agreement. The Manufacturer further agrees to execute and deliver to the Railroad all and every such further assurance as may be reasonably requested by the Railroad, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Manufacturer will give notice to the Railroad of any claim known to the Manufacturer from which

liability may be charged against the Railroad hereunder and the Railroad will give notice to the Manufacturer of any claim known to the Railroad from which liability may be charged against the Manufacturer hereunder.

ARTICLE 15. *Assignments.* The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor; provided, however, an assignment or transfer to a railroad company (including a successor corporation by consolidation or merger) which shall acquire all or substantially all the property of the Railroad and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each and all of the obligations and covenants of the Railroad hereunder shall not constitute a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time to any person or persons. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to construct and deliver the Equipment in accordance with Articles 1 and 2 hereof or to respond to its warranties and indemnities contained in Articles 13 and 14 hereof, or relieve the Railroad of any of its obligations to the Manufacturer hereunder, including without limitation its obligations to the Manufacturer under Articles 2, 4, 7, 13 and 14 hereof and the last paragraph of this Article 15 and subparagraphs (a) and (b) of the third paragraph of Article 3 hereof or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and

post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all of the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of notification of any such assignment, all payments thereafter to be made by the Railroad hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

The Railroad recognizes that it is the custom of railroad equipment manufacturers or sellers to assign conditional sale agreements and understands that the assignment of this Agreement, except for certain specified rights of the Manufacturer hereunder, is to become effective concurrently herewith. The Railroad expressly represents, for the purpose of assurance to any person or persons considering the acquisition of this Agreement or of all or any of the rights of the Manufacturer hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Manufacturer as hereinbefore provided the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against the Manufacturer only.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Railroad will, whenever requested by such assignee, change the markings to be maintained on both sides of each unit of the Equipment so as to indicate the title of such assignee to the Equipment, such markings to bear such words or legend as shall reasonably be specified by such assignee. The cost of such markings with respect to the first assignee of this Agreement (or to a successor agent in case the first assignee is an agent) shall be borne by the Railroad. The cost of such markings in connection with any subsequent assignment (other than to a successor agent if the first assignee is an agent) will be borne by the subsequent assignee.

In the event of any such assignment prior to the completion of delivery of the Equipment, the Railroad, in connection with each settlement for a Group of the Equipment subsequent to such transfer or assignment, will deliver to the assignee, at the time it gives notice fixing the Closing Date with respect to such Group as provided in Article 3 hereof, all documents required by the terms of such assignment to be delivered to the assignee in connection with such settlement, in such number of counterparts as may reasonably be requested, except for any opinion of counsel for the assignee.

If this Agreement shall have been assigned by the Manufacturer and the assignee shall not make payment to the Manufacturer on the Closing Date with respect to a Group of the Equipment of an amount equal to that portion of the Purchase Price of such Group payable pursuant to subparagraph (c) of the third paragraph of Article 3 hereof, the Manufacturer will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by the assignee, the Railroad will not later than 90 days after such Closing Date pay or cause to be paid to the Manufacturer such amount, together with interest thereon from such Closing Date to the

date of such payment to the Manufacturer at the highest prime rate of interest of leading New York City banks in effect on such Closing Date.

ARTICLE 16. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any sum payable by it when payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad, and all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings or otherwise given the same status as obligations incurred by such a trustee or trustees within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the indebtedness payable hereunder), and all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees

or receiver or receivers appointed for the Railroad or for its property in connection with any such proceedings or otherwise given the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at the rate of $11\frac{1}{2}\%$ per annum, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of such indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

The Vendor may waive any such event of default and its consequences and rescind and annul any such declaration by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no such declaration had been made. Notwithstanding the immediately preceding sentence, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such

waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. *Remedies.* At any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Article 16 hereof), the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad, with or without process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge

for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad. Without limiting the obligations of the Railroad set forth in the two immediately preceding sentences, the Vendor may also reasonably designate a point or points upon the lines of the Railroad at which such lines interchange with the lines of any other railroad company or companies for the delivery of the Equipment in connection with the sale, lease or other disposition of the Equipment by the Vendor; and the Railroad shall at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points so designated by the Vendor. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Article 16 hereof), the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable. In the event that the Vendor should elect to retain the Equipment

and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Article 16 hereof), the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, how-

ever, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 22 hereof. If such sale shall be a private sale, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and

remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, and, if the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, to the end that this Agreement shall be

deemed to be an agreement of conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

ARTICLE 19. *Extension not a Waiver.* No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Vendor shall impair or affect the Vendor's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the obligations of the Railroad hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 20. *Recording.* The Railroad will cause this Agreement, the first assignment hereof (a counterpart of such assignment being attached hereto) and any amendments or supplements hereto and thereto to be filed and recorded with the Interstate Commerce Commission and otherwise as may be required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidences of such filing and recording and an opinion of counsel for the Railroad with respect thereto satisfactory to the Vendor.

ARTICLE 21. *Payment of Expenses.* The Railroad will pay all reasonable costs and expenses, except the counsel fees of the

Manufacturer, but including the fees and expenses of counsel for the first assignee of this Agreement and of special counsel for all other parties acquiring interests in the first assignment by the Vendor of this Agreement, and including taxes, if any, incident to the printing or other duplicating, execution, acknowledgment, delivery, filing, recording and deposit of this Agreement, of such first assignment, of any instrument supplemental to or amendatory of this Agreement or such first assignment and of any instrument required of the Vendor under Article 5 hereof upon the payment in full of the indebtedness in respect of the Purchase Price of the Equipment due hereunder. In addition, the Railroad will pay all reasonable costs and expenses, including fees and expenses of counsel and including taxes, if any, of the first assignee of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent) and of any party or parties acquiring interests in such first assignment, incurred in connection with such first assignment and payments made thereunder by such first assignee, and in connection with the transfer by any party or parties of interests acquired in such first assignment. For the purposes of this Article 21, if the first assignee is an agent any successor agent to such agent shall be considered the first assignee.

ARTICLE 22. *Notice.* Any notice hereunder to a party designated below shall be deemed to be properly served if delivered or mailed to such party at its address below:

(a) to the Railroad, at 8 North Jefferson Street, Roanoke, Virginia 24011;

(b) to the Manufacturer, at the address specified in Item 3 of Schedule A hereto;

(c) to any assignee of the Vendor, at such address as may have been furnished in writing to the Railroad by such assignee;

or at such other address as may have been furnished in writing by such party to the other appropriate party or parties designated above.

unit and the title to such unit was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Manufacturer to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Manufacturer will not deliver any of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 20 of the Conditional Sale Agreement have been effected.

The Manufacturer covenants and agrees with the Agent that in any suit, proceeding or action brought by the Agent under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Agent from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the delivery or warranty thereof, or under Articles 13 and 14 of the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Manufacturer and shall not be enforceable against the Agent or any party or parties in whom title to the Equipment or any unit thereof or any of the rights of the Manufacturer under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments.

The foregoing indemnification provisions are conditioned upon (a) the Agent giving notice to the Manufacturer of any suit, proceeding or action by the Agent herein described, and promptly moving or taking other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad therein, and (b), if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Agent promptly notifying the Manufacturer of any such defense, setoff, counterclaim or recoupment asserted by the Railroad and giving the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of designs specified by the Railroad and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Railroad and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Agent from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Agent or its assigns because of the use in or about the Equipment, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each unit of the Equipment, prior to the time of delivery thereof to the Railroad, in letters not less than one inch in height, the following legend:

**OWNED BY A BANK OR TRUST COMPANY UNDER A
SECURITY AGREEMENT FILED UNDER INTERSTATE
COMMERCE ACT, SECTION 20c.**

SECTION 4. Upon request of the Agent, its successors and assigns, the Manufacturer will execute any and all instruments

which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. Subject to the condition contained in the fifth paragraph of this Section 5, if the Agent shall at any time receive from the Railroad in respect of the Conditional Sale Agreement a copy of a Final Statement (as this term is defined in subparagraph (b) of the third paragraph of Article 3 of the Conditional Sale Agreement) showing that the Final Purchase Price (as this term is defined in said subparagraph (b)) of all Groups of units of the Equipment delivered under the Conditional Sale Agreement exceeds the Aggregate Invoiced Price (as this term is defined in said subparagraph (b)) of such units of the Equipment but is less than the Deferred Purchase Price (as this term is defined in subparagraph (a) of said third paragraph) of all units of the Equipment, the Agent forthwith shall pay to the Manufacturer the amount of such excess.

The Agent shall, subject to the condition contained in the fifth paragraph of this Section 5, pay to the Manufacturer, on each Closing Date fixed as provided in said Article 3 occurring on or before May 1, 1971, with respect to a Group of units of the Equipment, that portion of the Invoiced Price (as this term is defined in said Article 3) of such Group payable by the Railroad to the Manufacturer pursuant to subparagraph (c) of the third paragraph of said Article 3, provided that on or before such Closing Date there shall have been delivered to the Agent, as provided in Article 15 of the Conditional Sale Agreement, the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bill of sale from the Manufacturer to the Agent transferring to the Agent, for the benefit of the Investors, title to the units of the Equipment in such Group and warranting to the Agent and to the Railroad that at the

time of delivery of such units to the Railroad under the Conditional Sale Agreement the Manufacturer had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement;

(b) Certificate of acceptance signed by an authorized representative of the Railroad stating that the units of the Equipment in such Group have been delivered to the Railroad and inspected and accepted on behalf of the Railroad and further stating that there was plainly, distinctly, permanently and conspicuously marked in stencil on each side of each of such units at the time of its acceptance, in letters not less than one inch in height, the following legend:

OWNED BY A BANK OR TRUST COMPANY UNDER A
SECURITY AGREEMENT FILED UNDER INTERSTATE
COMMERCE ACT, SECTION 20c.

(c) Invoice of the Manufacturer for the units of the Equipment in such Group, with a certification by the Railroad endorsed thereon as to the correctness of the price of such units stated therein;

(d) Opinion of Messrs. Kelly Drye Warren Clark Carr & Ellis, who are acting as special counsel for the Agent and for the Investors, dated as of such Closing Date, stating that (i) the Agency Agreement has been duly authorized, executed and delivered by, and is a legal, valid and binding instrument of, each of the parties thereto and is enforceable in accordance with its terms, (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by, and are legal, valid and binding instruments of, the respective parties thereto and hereto and are enforceable in accordance with their terms, (iii) the Agent is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (iv) title to the units of the Equipment in such Group is validly vested in the Agent and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except only the rights of the Rail-

road under the Conditional Sale Agreement, (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Assignment, (vi) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission and no other filing or recordation is necessary for the protection of the rights of the Agent in the United States of America, and (vii) registration of the Conditional Sale Agreement or this Assignment, or of interests acquired therein or herein, or of the Certificates of Interest (as defined in the Agency Agreement), is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended;

(e) Opinion of counsel for the Railroad to the effect set forth in clauses (iv), (v) and (vi) of subparagraph (d) of this paragraph, and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of the Commonwealth of Virginia (the state of its incorporation) and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered on behalf of the Railroad and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) the execution and delivery of the Agency Agreement and the Conditional Sale Agreement, and the consummation and fulfillment of the transactions contemplated therein, will not conflict with, result in a breach of, or constitute a default under, the Charter and Bylaws of the Railroad, any action of the Board of Directors of the Railroad authorized under said Charter and Bylaws, any of the terms, conditions or provisions of any law, regulation, order, writ, injunction, decree of any court or other governmental instrumentality or of any agreement or instrument to which the Railroad is now a party and (iv) subject to the due authorization, execution and delivery of this Assignment by the respective parties hereto, this Assignment is a legal, valid and binding instrument enforceable in accordance with its terms;

(f) Opinion of counsel for the Manufacturer (unless the Manufacturer is an individual or individuals) to the effect that the Conditional Sale Agreement and this Assignment have been duly authorized, executed, and delivered by the Manufacturer and are legal, valid and binding instruments enforceable in accordance with their terms; to the effect set forth in clauses (iii) and (iv) of subparagraph (d) of this paragraph; and stating that the Manufacturer is a duly organized and existing corporation in good standing under the laws of the state of its incorporation; and

(g) if the Manufacturer is an individual or individuals, an opinion of counsel for the Manufacturer, stating that (i) the Conditional Sale Agreement and this Assignment have been duly executed and delivered by the Manufacturer and are legal, valid and binding instruments enforceable in accordance with their terms, (ii) the Agent is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment and (iii) title to the units of the Equipment in such Group is validly vested in the Agent and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except the rights of the Railroad under the Conditional Sale Agreement.

Any opinion delivered hereunder on or after the first Date of Deposit (as this term is defined in the Agency Agreement) may state that counsel signing such opinion reaffirms any statement contained in any opinion of the same counsel theretofore or then being delivered pursuant to the Agency Agreement without repeating the substance of such earlier opinion. In giving the opinions specified in subparagraphs (d), (e), (f) and (g) of the second paragraph of this Section 5, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), counsel may rely (a) as to the due author-

ization and execution of the Agency Agreement referred to in clause (i) of said subparagraph (d) upon the representation of each of the parties to the Agency Agreement contained in Section 5 of Article 4 thereof and (b) as to any matter governed by the law of any jurisdiction other than New York or the United States of America, upon the opinion of counsel for the Manufacturer or the opinion of counsel for the Railroad, or an opinion of counsel practicing in such jurisdiction, as to such matter; provided, however, that said counsel shall state in such opinion that they believe that they, the Agent and the Investors are justified in so relying.

The obligation of the Agent hereunder to make any payment to the Manufacturer as hereinabove provided is hereby expressly conditioned upon the prior deposit by the Investors with the Agent, pursuant to the Agency Agreement, of sufficient funds to enable the Agent to make such payment; provided, however, in the event of the failure of any Investor to make timely deposit with the Agent in full of the funds required to be deposited by it under the Agency Agreement, the Manufacturer shall be entitled to look only to the Railroad for the payment which would have been made from any Investors' funds not so deposited.

The Agent shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

It is understood and agreed that the Agent shall not be required to make any payment with respect to any units of the Equipment excluded from the Conditional Sale Agreement pursuant to Article 2 or 7 thereof.

SECTION 6. The Agent may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Rail-

road thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Agent, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that it is a valid and existing agreement binding upon the Manufacturer and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Agent or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Agent or intended so to be.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Virginia; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement and this Assignment shall be filed, recorded or deposited.

SECTION 9. This Assignment, which is dated for convenience as of May 1, 1970, may be executed in any number of counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute a single instrument. The actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed. The Agent will deliver one of such counterparts to the Railroad.

unit and the title to such unit was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Manufacturer to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Manufacturer will not deliver any of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 20 of the Conditional Sale Agreement have been effected.

The Manufacturer covenants and agrees with the Agent that in any suit, proceeding or action brought by the Agent under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Agent from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the delivery or warranty thereof, or under Articles 13 and 14 of the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Manufacturer and shall not be enforceable against the Agent or any party or parties in whom title to the Equipment or any unit thereof or any of the rights of the Manufacturer under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments.

The foregoing indemnification provisions are conditioned upon (a) the Agent giving notice to the Manufacturer of any suit, proceeding or action by the Agent herein described, and promptly moving or taking other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad therein, and (b), if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Agent promptly notifying the Manufacturer of any such defense, setoff, counterclaim or recoupment asserted by the Railroad and giving the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of designs specified by the Railroad and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Railroad and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Agent from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Agent or its assigns because of the use in or about the Equipment, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each unit of the Equipment, prior to the time of delivery thereof to the Railroad, in letters not less than one inch in height, the following legend:

OWNED BY A BANK OR TRUST COMPANY UNDER A
SECURITY AGREEMENT FILED UNDER INTERSTATE
COMMERCE ACT, SECTION 20c.

SECTION 4. Upon request of the Agent, its successors and assigns, the Manufacturer will execute any and all instruments

which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. Subject to the condition contained in the fifth paragraph of this Section 5, if the Agent shall at any time receive from the Railroad in respect of the Conditional Sale Agreement a copy of a Final Statement (as this term is defined in subparagraph (b) of the third paragraph of Article 3 of the Conditional Sale Agreement) showing that the Final Purchase Price (as this term is defined in said subparagraph (b)) of all Groups of units of the Equipment delivered under the Conditional Sale Agreement exceeds the Aggregate Invoiced Price (as this term is defined in said subparagraph (b)) of such units of the Equipment but is less than the Deferred Purchase Price (as this term is defined in subparagraph (a) of said third paragraph) of all units of the Equipment, the Agent forthwith shall pay to the Manufacturer the amount of such excess.

The Agent shall, subject to the condition contained in the fifth paragraph of this Section 5, pay to the Manufacturer, on each Closing Date fixed as provided in said Article 3 occurring on or before May 1, 1971, with respect to a Group of units of the Equipment, that portion of the Invoiced Price (as this term is defined in said Article 3) of such Group payable by the Railroad to the Manufacturer pursuant to subparagraph (c) of the third paragraph of said Article 3, provided that on or before such Closing Date there shall have been delivered to the Agent, as provided in Article 15 of the Conditional Sale Agreement, the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bill of sale from the Manufacturer to the Agent transferring to the Agent, for the benefit of the Investors, title to the units of the Equipment in such Group and warranting to the Agent and to the Railroad that at the

time of delivery of such units to the Railroad under the Conditional Sale Agreement the Manufacturer had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement;

(b) Certificate of acceptance signed by an authorized representative of the Railroad stating that the units of the Equipment in such Group have been delivered to the Railroad and inspected and accepted on behalf of the Railroad and further stating that there was plainly, distinctly, permanently and conspicuously marked in stencil on each side of each of such units at the time of its acceptance, in letters not less than one inch in height, the following legend:

OWNED BY A BANK OR TRUST COMPANY UNDER A
SECURITY AGREEMENT FILED UNDER INTERSTATE
COMMERCE ACT, SECTION 20c.

(c) Invoice of the Manufacturer for the units of the Equipment in such Group, with a certification by the Railroad endorsed thereon as to the correctness of the price of such units stated therein;

(d) Opinion of Messrs. Kelly Drye Warren Clark Carr & Ellis, who are acting as special counsel for the Agent and for the Investors, dated as of such Closing Date, stating that (i) the Agency Agreement has been duly authorized, executed and delivered by, and is a legal, valid and binding instrument of, each of the parties thereto and is enforceable in accordance with its terms, (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by, and are legal, valid and binding instruments of, the respective parties thereto and hereto and are enforceable in accordance with their terms, (iii) the Agent is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (iv) title to the units of the Equipment in such Group is validly vested in the Agent and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except only the rights of the Rail-

road under the Conditional Sale Agreement, (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Assignment, (vi) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission and no other filing or recordation is necessary for the protection of the rights of the Agent in the United States of America, and (vii) registration of the Conditional Sale Agreement or this Assignment, or of interests acquired therein or herein, or of the Certificates of Interest (as defined in the Agency Agreement), is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended;

(e) Opinion of counsel for the Railroad to the effect set forth in clauses (iv), (v) and (vi) of subparagraph (d) of this paragraph, and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of the Commonwealth of Virginia (the state of its incorporation) and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered on behalf of the Railroad and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) the execution and delivery of the Agency Agreement and the Conditional Sale Agreement, and the consummation and fulfillment of the transactions contemplated therein, will not conflict with, result in a breach of, or constitute a default under, the Charter and Bylaws of the Railroad, any action of the Board of Directors of the Railroad authorized under said Charter and Bylaws, any of the terms, conditions or provisions of any law, regulation, order, writ, injunction, decree of any court or other governmental instrumentality or of any agreement or instrument to which the Railroad is now a party and (iv) subject to the due authorization, execution and delivery of this Assignment by the respective parties hereto, this Assignment is a legal, valid and binding instrument enforceable in accordance with its terms;

(f) Opinion of counsel for the Manufacturer (unless the Manufacturer is an individual or individuals) to the effect that the Conditional Sale Agreement and this Assignment have been duly authorized, executed, and delivered by the Manufacturer and are legal, valid and binding instruments enforceable in accordance with their terms; to the effect set forth in clauses (iii) and (iv) of subparagraph (d) of this paragraph; and stating that the Manufacturer is a duly organized and existing corporation in good standing under the laws of the state of its incorporation; and

(g) if the Manufacturer is an individual or individuals, an opinion of counsel for the Manufacturer, stating that (i) the Conditional Sale Agreement and this Assignment have been duly executed and delivered by the Manufacturer and are legal, valid and binding instruments enforceable in accordance with their terms, (ii) the Agent is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment and (iii) title to the units of the Equipment in such Group is validly vested in the Agent and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except the rights of the Railroad under the Conditional Sale Agreement.

Any opinion delivered hereunder on or after the first Date of Deposit (as this term is defined in the Agency Agreement) may state that counsel signing such opinion reaffirms any statement contained in any opinion of the same counsel theretofore or then being delivered pursuant to the Agency Agreement without repeating the substance of such earlier opinion. In giving the opinions specified in subparagraphs (d), (e), (f) and (g) of the second paragraph of this Section 5, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), counsel may rely (a) as to the due author-

ization and execution of the Agency Agreement referred to in clause (i) of said subparagraph (d) upon the representation of each of the parties to the Agency Agreement contained in Section 5 of Article 4 thereof and (b) as to any matter governed by the law of any jurisdiction other than New York or the United States of America, upon the opinion of counsel for the Manufacturer or the opinion of counsel for the Railroad, or an opinion of counsel practicing in such jurisdiction, as to such matter; provided, however, that said counsel shall state in such opinion that they believe that they, the Agent and the Investors are justified in so relying.

The obligation of the Agent hereunder to make any payment to the Manufacturer as hereinabove provided is hereby expressly conditioned upon the prior deposit by the Investors with the Agent, pursuant to the Agency Agreement, of sufficient funds to enable the Agent to make such payment; provided, however, in the event of the failure of any Investor to make timely deposit with the Agent in full of the funds required to be deposited by it under the Agency Agreement, the Manufacturer shall be entitled to look only to the Railroad for the payment which would have been made from any Investors' funds not so deposited.

The Agent shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

It is understood and agreed that the Agent shall not be required to make any payment with respect to any units of the Equipment excluded from the Conditional Sale Agreement pursuant to Article 2 or 7 thereof.

SECTION 6. The Agent may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Rail-

road thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Agent, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that it is a valid and existing agreement binding upon the Manufacturer and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Agent or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Agent or intended so to be.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Virginia; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement and this Assignment shall be filed, recorded or deposited.

SECTION 9. This Assignment, which is dated for convenience as of May 1, 1970, may be executed in any number of counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute a single instrument. The actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed. The Agent will deliver one of such counterparts to the Railroad.

IN WITNESS WHEREOF, Pullman Incorporated (Pullman-Standard Division) and the Agent have caused this instrument to be signed and acknowledged by their proper officers and their respective corporate seals to be hereunto affixed and duly attested, as of the day and year first above written.

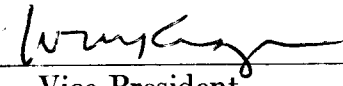
PULLMAN INCORPORATED
(Pullman-Standard Division)

By 
Vice President

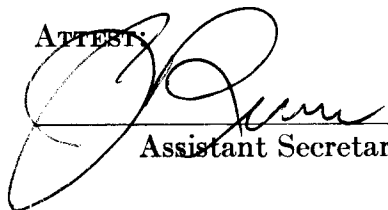
ATTEST:


Assistant Secretary

THE FIRST PENNSYLVANIA BANKING
AND TRUST COMPANY, as Agent

By 
Vice President

ATTEST:


Assistant Secretary

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

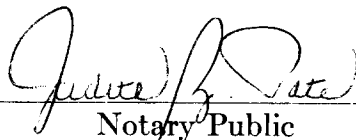
On this 15th day of May, 1970, before me personally appeared Stanley Brown, to me personally known, who, being by me duly sworn, says that he is a Vice President of Pullman Incorporated (Pullman-Standard Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said corporation.


Notary Public

MY COMMISSION EXPIRES FEB. 21, 1974

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this 4th day of May, 1970, before me personally appeared W. M. KRAYE, to me personally known, who, being by me duly sworn, says that he is a Vice President of The First Pennsylvania Banking and Trust Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said corporation.


Notary Public

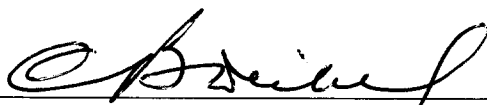
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires January 23, 1974

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Norfolk and Western Railway Company hereby acknowledges due notice of the assignment made by the foregoing Agreement and Assignment dated as of May 1, 1970.

NORFOLK AND WESTERN RAILWAY COMPANY

By



Assistant Vice President—Finance